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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )

Request by ALTS for Clarification  
of the Commission's Rules )

Regarding Reciprocal Compensation for  
Information Service Provider Traffic )

CCB/CPD 97-30

CC Docket #96-98  
~~CCB/CPD 97-30~~

**REPLY COMMENTS OF GST TELECOM, INC.  
IN SUPPORT OF THE ALTS  
REQUEST FOR EXPEDITED CLARIFICATION OF  
THE COMMISSION'S RULES  
REGARDING RECIPROCAL COMPENSATION FOR  
INFORMATION SERVICE PROVIDER TRAFFIC**

GST Telecom, Inc. ("GST"), by its attorneys, submits these reply comments in support of the above-captioned request. GST, in its initial comments filed July 17, 1997, supported the ALTS request. GST herein replies to comments filed in opposition to the ALTS request.

GST's initial comments urged the Commission to rule expeditiously that nothing in the Commission's Local Competition Order, CC Docket No. 96-98 (adopted August 8, 1996) requires that calls to ISPs made from within a local calling area be treated any differently than other local traffic under current reciprocal compensation arrangements. Many commenters document that incumbent local exchange carriers ("ILECs") are refusing to pay competitive exchange carriers ("CLECs") reciprocal compensation for local traffic terminated to information service providers ("ISPs").<sup>1</sup>

<sup>1</sup> See, e.g., Comments of Cox Communications, Inc., Comments of Dobson Wireless, Inc.; Comments of Hyperion Telecommunications, Inc.; Comments KMC Telecom, Inc.; Comments of WorldCom, Inc.

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GST's initial comments warned that permitting the ILECs to exclude specific categories of local traffic terminating at an end-user location from reciprocal compensation payments, based upon an ILEC's suspicion that further routing might occur once that traffic is terminated at an ISP location, is a dangerous, slippery path. Yet it appears that it is precisely this slippery path that the ILECs, in their misguided attempts to justify their current anticompetitive "refusal to pay and keep" approach, would have the Commission precariously descend. This path, like some D.C. streets, has a lot of potholes.

First, the ILECs, in arguing to exclude ISP-terminated calls from reciprocal compensation payments, conveniently ignore the fundamental fact that the traffic is carried over local lines and terminated to a local number.<sup>2</sup> However, in an attempt to construct an argument for excluding such traffic, ILECs press the notion that the public switched call that terminates at the local number should really be treated as an interstate access line, and thus should be linked together with the enhanced service offering and then considered some sort of "end-to-end" communication together with the ISP's enhanced service offerings.<sup>3</sup> The ILECs persist in this notion despite the Commission's policy decision that ISPs are not carriers and are not required to pay current access charges, and the Commission's clear recognition that the local call routed through the public switched network can be severed from the subsequent enhanced service and any communication

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<sup>2</sup> See, e.g. Comments of America Online, Inc. at 7-11.

<sup>3</sup> For example, Ameritech erroneously argues that "The fact that this traffic is inseverable-that one Internet "call" may simultaneously be intrastate, international, and interstate, permits, indeed compels, the Commission to exercise jurisdiction with respect to all of it under the inseverability criteria of Louisiana Public Service Commission v. FCC (Comments of Ameritech at 12-13, citations omitted).

services used by the ISP in providing that service. As commenters have pointed out, the Commission previously has made the determination that when “subscriber obtains a connection to an Internet service provider via voice grade access to the public switched network, that connection is a telecommunications service and is distinguishable from the Internet Service Provider’s offering.”<sup>4</sup>

Second, the ILEC’s attempt to exclude ISP-bound local traffic from reciprocal compensation payments, absent further decisions of the Commission, would result in the assignment of any such traffic, for CLEC purposes, to a non-payment netherworld.<sup>5</sup> Interestingly, the ILECs, ever vigilant with respect to their own revenues, have not suggested how, under current Commission policies and rules, CLECs would receive compensation for carriage of traffic within the local network to ISP destinations, because, under the ILEC scenario, it appears that neither access charges (which are inappropriate) nor local compensation payments would be made to CLECs for carriage of such traffic.

Several commenters have discussed the severe anticompetitive impact exclusion of ISP-terminated traffic from reciprocal compensation would have upon the information service and CLEC industries. For example, the Commercial Internet Exchange Association states that “the refusal to abide by reciprocal compensation obligations harms telecommunications competition by excluding

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<sup>4</sup> In the Matter of Federal State Joint Board on Universal Service, CC Docket No. 96-45, *Report and Order* at ¶ 789. *See also* Comments of Teleport Communications Group Inc. at 3-5; Comments of RCN Telecom Services, Inc. at 5-6, *citing* In the Matter of Implementation of the Non-Accounting Safeguards, CC Docket 96-149, FCC 96-489 (rel. Dec. 24, 1996).

<sup>5</sup> *See, e.g.* Comments of Adelphia Communications *et al.*, Comments of America Online.

a significant segment of end-users from the telecommunications services offered by new entrants....”<sup>6</sup>

America Online explains that “The ILEC attack on the reciprocal compensation framework for ISP traffic is designed to raise the costs to CLECs of offering services to ISPS and to stem the migration of ISP traffic off the ILEC networks.”<sup>7</sup> XCOM, a new telecommunications entrant, expresses concern that this recent, and apparently uniform, “deliberate strategy” by Regional Bell Operating Companies (“RBOCs”) will foreclose competition.<sup>8</sup>

Third, the ILEC’s action in withholding payments, based on their own misinterpretations of the FCC’s policies, is not a course of action that the Commission should countenance. If the ILECs are permitted to establish their own policies about what traffic they believe should be excluded from reciprocal compensation obligations (apparently based upon whether such services face competitive pressure) then the strong potential for anti-competitive impact will continue to exist. Thus, GST continues to encourage the Commission reject the ILECs efforts to exclude any circuits purchased from local tariffs (regardless of the purpose or nature of the traffic carried on such circuits) from the reciprocal compensation payments.

GST is aware that the Commission currently is investigating what further Internet-related policies may be in the public interest, and that in the future, Commission policies may change. However, unless and until such policies are revised, the Commission should make clear that under its current policy, ILEC must include all locally tariffed traffic, including ISP-terminated traffic, in reciprocal compensation payments.

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<sup>6</sup> Comments of the Commercial Internet Exchange Association at 2.

<sup>7</sup> Comments of America Online at 15.

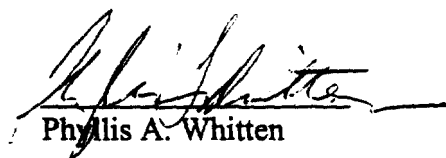
<sup>8</sup> See Comments of XCOM Technologies, Inc.

## **CONCLUSION**

GST respectfully submits that the ALTS request for clarification is in the public interest, and such clarification should be issued as expeditiously as possible.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of July 1997, copies of REPLY COMMENTS OF GST TELECOM, INC. were hand delivered to those parties marked with an asterisk. All others were served by first class mail.

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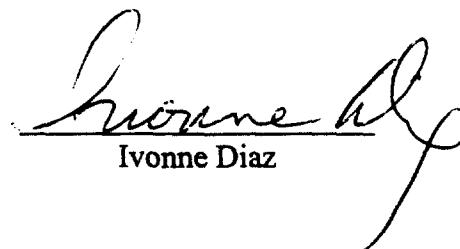
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